
HOUSE BILL No. 1578

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-45-4.5.

Synopsis: Sexually oriented businesses. Makes it a Class A misdemeanor for a person who is seminude to be closer than six feet from the patron of a sexually oriented business. Makes it a Class A misdemeanor for a patron in a sexually oriented business to touch a person who is seminude, or for a person who is seminude in a sexually oriented business to touch a patron. Makes it a Class B infraction for a sexually oriented business to admit a person less than 21 years of age.

Effective: July 1, 2003.

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January 16, 2003, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1578

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-45-4.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]:

4 **Chapter 4.5. Sexually Oriented Businesses**

5 **Sec. 1. The following definitions apply throughout this chapter:**

6 **(1) "Adult arcade" means any place:**

7 **(A) to which the public is permitted or invited; and**

8 **(B) where coin operated, slug operated, or electronically,**
9 **electrically, or mechanically controlled still or motion**
10 **picture machines, projectors, or other image producing**
11 **devices are regularly maintained to have regularly shown**
12 **to less than six (6) persons per machine at any one (1) time**
13 **images that are characterized by their emphasis on matter**
14 **exhibiting or describing specified sexual activities or**
15 **specified anatomical areas.**

16 **(2) "Adult bookstore" means a commercial establishment that**
17 **has as a significant or substantial part of its stock-in-trade,**



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derives a significant or substantial part of its revenues from, devotes a significant or substantial part of its interior business or advertising to, or maintains a substantial section of its sales or display space to the sale or rental of, for any form of consideration, at least one (1) of the following:

(A) Books, magazines, periodicals, other printed matter, photographs, photographic media, or other visual representations that are characterized by their emphasis on the exhibition or description of specified sexual activities or specified anatomical areas.

(B) Instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the person operating the device or others.

(3) "Adult cabaret" means a nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following:

(A) Persons who appear seminude.

(B) Performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

(C) Photographic media that are characterized by their emphasis on the exhibition or description of specified sexual activities or specified anatomical areas.

(4) "Adult motel" means a motel, hotel, or similar commercial establishment that:

(A) offers public accommodations, for any form of consideration, that provide patrons with photographic media that are characterized by their emphasis on the exhibition or description of specified sexual activities or specified anatomical areas;

(B) advertises the availability of this sexually oriented type of material by means of:

(i) a sign visible from the public right-of-way; or

(ii) any off-premises advertising, including newspapers, magazines, pamphlets, leaflets, radio, or television;

(C) offers a sleeping room for rent for a period of less than ten (10) hours; or

(D) allows a tenant or occupant to subrent the sleeping room for a period of less than ten (10) hours.

(5) "Adult motion picture theater" means a commercial

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establishment where photographic media that are characterized by their emphasis on the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

(6) "Adult theater" means a theater, a concert hall, an auditorium, or a similar commercial establishment that, for any form of consideration, regularly features:

(A) persons who appear seminude or in a state of nudity; or

(B) performances;

that are characterized by their emphasis on the exposure of specified anatomical areas or specified sexual activities.

(7) "Characterized by an emphasis on" means the dominant or principal theme of an object or premises.

(8) "Nude model studio" means any place where persons regularly appear either:

(A) seminude; or

(B) in a state of nudity;

for any form of consideration, to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. However, the term does not include a state educational institution (as defined in IC 20-12-0.5-1) or a postsecondary proprietary educational institution accredited under IC 20-1-19.

(9) "Operate or cause to be operated" means to:

(A) cause to function;

(B) put or keep in a state of doing business; or

(C) have authority to exercise overall operational control individually or with other persons.

(10) "Out-call service" means seminude dancing or exhibition, for any form of consideration, off the premises of a sexually oriented business.

(11) "Photographic media" means closed circuit television transmissions, films, motion pictures, videocassettes, compact discs, digital video discs, slides, computer displays, and other similar photographic reproductions.

(12) "Regularly shown" means a consistent or substantial course of conduct so that:

(A) photographic media; or

(B) performances;

exhibiting specified anatomical areas or specified sexual

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activity constitute a substantial part of the photographic media or performances offered as part of an ongoing business.

(13) "Seminude" means a state of dress in which opaque clothing covers not more than the:

(A) genitals;

(B) pubic area; and

(C) nipple of a human female breast;

as well as parts of the body covered by supporting straps or devices.

(14) "Sexual encounter establishment" means a business or commercial establishment that, as one (1) of its primary business purposes, offers for any form of consideration a place where two (2) or more persons may congregate, associate, or consort:

(A) for the purpose of specified sexual activities; or

(B) when one (1) or more persons are seminude.

(15) "Sexually oriented business" means any of the following businesses or commercial establishments:

(A) Adult arcade.

(B) Adult bookstore.

(C) Adult novelty store.

(D) Adult video store.

(E) Adult cabaret.

(F) Adult motel.

(G) Adult motion picture theater.

(H) Adult theater.

(I) Nude model studio.

(J) Sexual encounter establishment.

However, the term does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(16) "Specified anatomical areas" means any of the following:

(A) Human genitals in a state of sexual arousal.

(B) The appearance of the cleft of the buttocks, anus, male or female genitals, or nipple of the human female.

(C) A state of dress that fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or nipple of the human female.

(17) "Specified sexual activities" means any of the following:

(A) Intentional fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breasts.

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(B) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.

(C) Excretory functions as part of or in connection with any of the activities described in clauses (A) through (B).

(18) "State of nudity" means the following:

(A) Nudity (as defined in IC 35-45-4-1).

(B) Anal cleft or cleavage with less than a fully opaque covering.

Sec. 2. A person who knowingly or intentionally appears seminude in a place that:

(1) is a sexually oriented business; and

(2) is not:

(A) at least six (6) feet from a patron or customer of the sexually oriented business; and

(B) on a stage at least two (2) feet above the floor used by customers and patrons of a sexually oriented business;

commits a Class A misdemeanor.

Sec. 3. A person who, while seminude, knowingly or intentionally touches:

(1) a patron or customer; or

(2) the clothing of a patron or customer;

of a sexually oriented business or an out-call service commits a Class A misdemeanor.

Sec. 4. A person, while a patron or customer of a sexually oriented business or an out-call service, knowingly or intentionally touches:

(1) a person; or

(2) the clothing of a person;

who is seminude or in a state of nudity commits a Class A misdemeanor.

Sec. 5. A person who operates or causes a sexually oriented business to be operated commits a Class B infraction if an individual less than twenty-one (21) years of age is admitted to the sexually oriented business. The person commits a separate offense for each individual admitted to the sexually oriented business. Notwithstanding IC 34-28-5-4, a civil penalty of not less than five hundred dollars (\$500) shall be entered for each infraction under this section.

Sec. 6. A political subdivision may adopt ordinances to enact local zoning or licensing regulations, or both, concerning sexually oriented businesses if the regulations are not less restrictive than

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1 **the provisions of this article.**
2 SECTION 2. [EFFECTIVE JULY 1, 2003] IC 35-45-4.5-2,
3 IC 35-45-4.5-3, and IC 35-45-4.5-4, all as added by this act, apply
4 only to acts committed after June 30, 2003.

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